

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND REGULAR REDEVELOPMENT AGENCY MEETING
MINUTES – APRIL 5, 2006**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Grzan, Sellers, Tate and Mayor/Chairman Kennedy
Absent: Council/Agency Member Carr

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Kern announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: Tichinin v. City of Morgan Hill
Case Number: Santa Clara County Superior Court, Case No. 1-05-CV-046112
Attendees: City Manager; City Attorney; Special Counsel Timothy J. Schmal

2.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority: Government Code Section 54957.6
Agency Negotiators: City Manager; Human Resources Director
Employee Organizations: Morgan Hill Police Officers Association
Employees Covered under Management Resolution #5872, as amended

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al. [Consolidated
Actions]
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561
Attendees: City Manager; City Attorney

4.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code Section 54956.9(a)
Case Name: Berkman v. City of Morgan Hill et al.
Case Number: Santa Clara County Superior Court, 1-04-CV-031021
Attendees: City Manager; City Attorney

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:04 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Kern announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Police Sergeant Jerry Neumayer led the Pledge of Allegiance.

PROCLAMATIONS

Mayor Kennedy presented Mr. Lynn Liebscutz with a proclamation declaring April 2006 as *Grange Month*.

Mayor Kennedy presented Amy Molica, Community Solutions, with a proclamation declaring April 2006 as *Sexual Assault Awareness Month*.

PRESENTATIONS

Mayor Kennedy presented a Certificate of Appreciation to Robert Ruge for his generous donation of \$5,000 to the Library Building Project for the new Morgan Hill Library.

David Cohen, President of the Community Law Enforcement Foundation of Morgan Hill, announced the formation of the Foundation which reconstitutes a group that has been dormant for several years. He stated the purpose of the Foundation is to support and promote public safety through partnerships that will provide resources to help the Morgan Hill Police Department perform at its highest level of service to the community. He indicated that the Foundation will raise money to see that the Police Department has all the tools and training it needs to be affective and better serve the City and its citizens.

CITY COUNCIL REPORT

No reports presented this evening.

CITY MANAGER REPORT

A report was not presented this evening.

CITY ATTORNEY REPORT

A report was not presented this evening.

OTHER REPORTS

None.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Brian Schmidt, Committee for Green Foothills, announced that the Open Space/Land Conservation Initiative is being circulated in the County in order to reduce the number of subdivisions that can occur in certain parts of the unincorporated County areas. He indicated that a number of environmental groups in the County are in support of the initiative, and that it was his hope that it receives support from Council members and the City, as a whole. He clarified that the initiative does not affect City incorporated areas or any lands incorporated into the City as a result of the urban limit line. He requested he be allowed to address the Council under Consent Calendar Item 5.

No further comments were offered.

Mayor Kennedy discussed the order of the agenda. He noted that there are several individuals in attendance on various issues and that there have been requests to move items forward. He recommended the Council address the library issue early in the agenda; and move item 22, the Solid Waste Management program, to public hearing.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy noted Mr. Schmidt made a request to address the Council on Consent Calendar item 5.

Mayor Pro Tempore Grzan supported pulling item 5 as well as item 11 from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Items 1-4, 6-10, and 12-13, as follows:*

1. **AMENDMENT TO ANNUAL CONTRACT WITH MONTEREY COUNTY LABORATORY FOR WATER SAMPLING AND ANALYSIS**
***Action:** 1) **Approved** the Amendment to the Agreement with Monterey County Laboratory Dated 2004 to Increase the Maximum Compensation from \$244,000 to \$314,000; and 2) **Approved** the Appropriation of \$70,000 from the Unappropriated Water Fund Balance (650) to Fund Perchlorate Testing and EPA Water Quality Testing.*
2. **REIMBURSEMENT FOR WATER MAIN INSTALLATION BY MARRAD GROUP, INC. (TRACT 9586)**
***Action:** **Authorized** the Reimbursement of \$145,585 for Installation of a 16-Inch Water Main by Marrad Group, Inc.*
3. **AWARD OF SECOND STREET WATER MAIN REPLACEMENT PROJECT**
***Action:** 1) **Awarded** Contract to Monterey Peninsula Engineering, Inc. for the Construction of the Second Street Water Main Replacement Project in the Amount of \$164,375; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$16,438.*
4. **FINAL MAP APPROVAL JASPER PARK PHASE II (TRACT 9772)**
***Action:** 1) **Approved** the Final Map; and 2) **Authorized** the Recordation of the Map Following Recordation of the Development Improvement Agreement.*
6. **CAPSTONE COMMUNITY CONVERSATION**
***Action:** 1) **Authorized** the City Manager to Execute an Agreement with ViewPoint Learning to Provide Public Engagement Services in Connection with the April 29, 2006 Capstone Community Conversation; Subject to Review and Approval by the City Attorney; and 2) **Increased** Appropriations in the Community Promotions Budget within the General Fund by \$10,000.*
7. **CONTRACT WITH DAVID J. POWERS & ASSOCIATES FOR ENVIRONMENTAL CONSULTING SERVICES**
***Action:** **Authorized** the City Manager to Execute the Agreement; Subject to Review and Approval by the City Attorney.*
8. **APPROVE PURCHASE ORDER FOR Data911 MOBILE COMPUTER SYSTEMS**
***Action:** 1) **Authorized** the City Manager to Approve a Purchase Order Totalling \$45,530.55 with Data911 for New Mobile Computer Systems; 2) **Awarded** the total Project Cost of \$104,069.82, and **Authorized** the City Manager to Execute a Three-Year Agreement with Data911 for the Purchase of These Computer Systems; Subject to Review and Approval by the City Attorney; and 3) **Approved** a Budgetary Increase of \$13,008.73 in the Police Donation Fund.*

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9. **PURCHASE OF POLICE DEPARTMENT MULTI-SERVICES OFFICER (MSO)/PRISONER TRANSPORT VEHICLE**
*Action: **Authorized** the City Manager to Approve the Purchase Order for a Police Transport Van through Downtown Ford for a Total Amount of \$22,560.*
10. **ACCEPTANCE OF DONATION FROM W. ROBERT RUGE FOR THE LIBRARY BUILDING PROJECT**
*Action: **Accepted** Monetary Donation of \$5,000 from W. Robert Ruge for the Library Building Project.*
12. **ADOPT ORDINANCE NO. 1763, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1763, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE MORGAN HILL MUNICIPAL CODE, SECTION 18.56.150 MINOR EXCEPTIONS TO ALLOW MINOR ADDITIONS WHILE MAINTAINING EXISTING NON-CONFORMING HEIGHTS (ZA-05-28: OAKHILL-SPERA).***
13. **ADOPT ORDINANCE NO. 1764, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1764, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A PRECISE DEVELOPMENT PLAN AND PUD GUIDELINES FOR A PLANNED UNIT DEVELOPMENT LOCATED AT THE NORTHWEST CORNER OF COCHRANE ROAD AND MADRONE PARKWAY (APN 726-33-028) (ZAA-04-11: COCHRANE-TBI).***
5. **STATUS REPORT REGARDING IMPLEMENTATION OF THE INSTITUTE GOLF COURSE MITIGATION MONITORING AND REPORTING PLAN (MMRP)**

Director of Community Development Molloy Previsich indicated that the Council requested a status report on the compliance activities of the Institute Golf Course with its Mitigation Monitoring and Reporting Plan (MMRP). She stated that the material presented to the Council has been compiled by Pacific Municipal Consultants (PMC) who are under contract with the City to be an extension of city staff to monitor compliance and review work products submitted to the City by the applicant. She said that a staff report prepared by the applicant's new team of consultants provides the status on what they have done as well as their action plan for coordinating the completion of the remaining activities. She presented a background on the land use entitlement for the Institute Golf Course property, including the adoption of the MMRP. She informed the Council that compliance activities did not begin until May 2005 as it took time to work with the property owner/applicant to select a consultant, and to agree upon an approach on how the compliance activities would be reviewed and monitored by the City. She stated that progress has been made, but not on the timeline that was originally anticipated by the MMRP. She indicated that two groundwater monitoring wells have been installed with a third well to be installed as soon as the rain stops. Surface quality reports have been submitted, and groundwater quality and supply reports are in the process of being completed (to be completed by summer 2006). The nitrogen control

plan and the chemical application management plan have been submitted. The City, Santa Clara Valley Water District, and the Regional Water Quality Control Board are reviewing these documents, with review being due this month in order to allow the Regional Water Quality Control Board to approve the MPDS permits. The storm water pollution plan has been approved. The geotechnical report and the drainage analysis are being worked on and should be completed by the end of this month. The riparian re-vegetation and document should be completed by summer 2006.

Ms. Molloy Previsich indicated that the Council approved the rezoning, mitigation measure and the mitigation monitoring plan in August 2004. The site development and grading plan permit still needs to be approved. Once approved, it will complete permitting for the golf course. She informed the Council that Michael McCormick, PMC, was in attendance and could answer questions on the status table. Also, in attendance were Stephanie Strelow, Jeff Nolan, and Peter Hasse, representing the applicant. These individuals are the technical professionals responsible for engineering, hydrology, and project management activities.

Mayor Pro Tempore Grzan inquired whether a date (timeline) can be identified for some of the mitigation measures in order to complete them.

Ms. Molloy Previsich indicated that some of the mitigation measures have expected dates. She felt the original dates identified in the MMRP were overly optimistic. She said that it takes time to hire qualified consultants and that information needs to be prepared and reviewed by staff, regional agencies, and the applicant; including coordination in the approach to the study. She noted that timelines were not included in the mitigation measures contained in the EIR, but were set forth and adopted as part of the adopted MMRP. Therefore, these mitigation measures are under the City's control. She said that there was a delay in getting started due to a new consultant team coming on board; going through a learning curve, on the applicant's side. She indicated that this is a complicated process and that it requires a lot of coordination with other agencies and consultants. She felt it would be difficult to establish hard due dates. She said staff has a good working relationship with agencies and the applicant's consultants, and that everyone is making substantial good faith progress toward completion. It was her belief that a site development and grading plan can be completed by summer 2006, and reviewed and approved by all agencies by fall 2006.

Mayor Pro Tempore Grzan expressed concern that the Army Corp of Engineers will not be able to visit the site to make a determination whether wetlands are being impacted due to the lack of staffing at that agency.

Ms. Molloy Previsich said that it was her understanding that the Army Corp of Engineers does not have an urgent need to make a site visit at this time. Once the riparian restoration plan is defined and the City and the Army Corp of Engineers can determine whether wetlands will be impacted, they will come out and make a determination.

Mayor Pro Tempore Grzan indicated that mitigation measures require monthly reports from the applicant; noting that this requirement has not been satisfied as some of the reports have been periodic and sporadic. He inquired how the City can ensure that the reports requested come to the Council on a monthly basis.

Ms. Molloy Previsich noted that the applicant has changed personnel. She indicated that another group meeting of the agencies was held a few weeks ago and had the appropriate professionals, on the applicant's side, their groundskeeper and the individuals conducting the water quality testing in attendance. At the meeting, it was emphasized that monthly reports were needed. The agencies have gotten together and made it clear to the applicant and their personnel that monthly reports are needed until it is determined that monthly reports are no longer needed; being submitted quarterly. The recourse for non compliance would be code enforcement with an ultimate revocation of zoning and non approval of permit requests. She said that with any code enforcement action, you gauge whether there is substantial good faith progress being made.

Mayor Kennedy opened the floor to public comment.

Brian Schmidt, Committee for Green Foothills, stated that it was his understanding that the applicant did not believe they were responsible for monitoring costs, and they insisted on this belief for a significant amount of time. He stated that monitoring costs are part of the applicant's responsibility. He noted that staff indicates that a change in team was another reason for delay. He did not believe this to be an acceptable excuse. He noted the City staff report states that the taxing of the actual mitigation measures contained in the EIR generally do not include specific due dates. He noted that the MMRP included timing sessions and is a part of the EIR. He stated that enforcement would result in not allowing the applicant to proceed due to lack of compliance. He requested that there be a discussion of the groundwater supply and whether it was adequate. He noted that this was a matter discussed extensively in the EIR 1½ years ago. He said that a mitigation measure stated that a study on the groundwater supply would be performed in summer 2005; noting that this has not been done. He requested clarification whether the study would proceed this summer rather than now or in the spring, before the applicant conducts a study on actual usage, as this would be helpful. He referred to the action plan attached to the staff report, mitigation number 3, and the groundwater supply investigation. The second bullet point states that additional analyses were provided to the consultant in December 2005. The results indicate there were no long term impacts on regional water level. He inquired how this statement can be realized when the study has not been conducted. He referred to a note that states the U.S. Fish and Wildlife's letter dated September 30, 2005 indicates that consultation is not required for the offsite mitigation. It was not clear to him whether the Fish and Wildlife Service was aware that the offsite mitigation approved in fall 2004 has not yet been met. He did not know the status of acquiring the offsite mitigation, noting that the applicant is behind.

No further comments were offered.

Stephanie Strelow, Strelow Consulting, project manager, informed the Council that she was hired by Fry's Electronics to serve as the project manager in getting the mitigation measures implemented. She indicated that she has been on board since the middle of November 2005. In late December/early January, she was provided with a study prepared by the previous consulting team. She reviewed this study and found information regarding groundwater supply impacts on the regional aquifer. She presented this information to the Santa Clara Valley Water District and the City at a meeting held a couple of weeks ago to discuss whether or not they should move forward with the model being reviewed. She has received this information and will be putting together a more detailed scope of work; incorporating some of the information. It was her understanding there were a couple of sites reviewed by the prior consulting team approximately a year ago and that these sites were not available. She has

been in touch with Mary Hammer with the Fish & Wildlife Service and City staff. She said that she needs to investigate whether there are any other available sites for serpentine habitat. It is her hope to get all the other studies underway so that the project can complete the site development and grading plan.

Jeff Nolan, Nolan Associates, applicant's hydrologist, addressed whether the groundwater study will look at winter or summer conditions. He said that he has not reviewed the entire scope of services yet, but that they will be putting together some type of modeling, independent of the season. He stated that it does not matter when the actual work is done. He will have monitoring data for both winter and summer water levels and that this data will be used for the model. The model will allow simulation on any particular condition (e.g., dry year conditions as well as wet year conditions).

Action: **Information** Only, No Action Required.

11. SOUTH VALLEY CIVIC THEATRE LEASE RENEWAL OF THE MORGAN HILL COMMUNITY PLAYHOUSE

Mayor Pro Tempore Grzan requested a staff report.

Interim Recreation & Community Services Manager Cooper informed the Council that the Playhouse contract renewal is a positive thing as the City has a good tenant in the South Valley Civic Theatre group. He announced that more money will be paid than the first three years of rental. He said that things are going well at the Playhouse and that staff member Karen Lengsfeld is responsible for this.

Mayor Pro Tempore Grzan inquired whether staff was tracking attendance to performances.

Karen Lengsfeld responded that staff tracked attendance the first three years of the contract as South Valley Theatre paid the City an amount over a certain amount of tickets sold. She indicated that attendance was good for some shows, while not so good for others. It was her belief that approximately 50% of the time, South Valley Theatre sold over the number of tickets set out in the contract, and that the City received a percentage of the balance of tickets sold. She clarified that the new agreement does not require South Valley Theatre to provide the City with ticket proceeds after selling a certain amount of tickets. This was left out of the new agreement because it was difficult to monitor. She indicated that South Valley Theatre is not the exclusive user of the Playhouse, and that there are other users. She stated that the City has received over \$100,000 in revenue in the last three years.

Mayor Pro Tempore Grzan requested that staff return to the Council with attendance numbers on an annual basis; in terms of how well the Playhouse is doing.

Council Member Sellers said that he had some one who was interested in using the Playhouse in the summer for an extended period of time. He was pleased to hear that this agreement is not an exclusive use.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** the Lease*

*Agreement Renewal with South Valley Civic Theatre (SVCT) for the use of the Morgan Hill Community Playhouse; and 2) **Authorized** the City Manager to Execute the Lease Agreement Renewal, Subject to Review and Approval by the City Attorney; and do whatever is Necessary to Effectuate the Agreement.*

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Sellers, the Agency Board, on a 4-0 vote with Agency Member Carr absent, **Approved** Consent Calendar Item 14, as follows:*

14. REVISION TO FACADE IMPROVEMENT PROGRAM

Action: ***Authorized** the Executive Director to Modify the Façade Improvement Program to Include Older Commercial and Industrial Buildings.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Council/Agency Member Tate requested that item 15 be pulled from the agenda as he would be abstaining from voting on this item.

Action: *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chair Grzan, the City Council/Agency Board, on a 3-0-1 vote with Council/Agency Member Tate abstaining and Council/Agency Member Carr absent, **Approved** Consent Calendar Item 15, as follows:*

15. JOINT REDEVELOPMENT AGENCY REGULAR AND CITY COUNCIL SPECIAL MEETING MINUTES OF MARCH 22, 2006

Action: ***Approved** as submitted.*

City Council Action

PUBLIC HEARINGS:

16. DEVELOPMENT AGREEMENT AMENDMENT APPLICATIONS DA-03-13 AND DA-05-01: MISSION VIEW DRIVE-MISSION RANCH – Ordinance Nos. 1765 & 1766, New Series

Director of Community Development Molloy Previsich presented the staff report on a request to amend two development agreements associated with the Mission Ranch project located on the southeast corner of Cochrane Road and Mission View Drive. The amendment is being requested because five allotments were redistributed from another project that was not performing to these projects. She indicated that

application DA-03-13 will receive one additional allocation, and DA-05-01 will receive four additional allocations.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the reading in Full of Ordinance No. 1765, New Series, Amending Development Agreement DA-03-13.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1765, by Title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1658, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-03-13 FOR APPLICATION MP 02-15: MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF ONE ADDITIONAL ALLOCATION FOR FISCAL YEAR 2005-2006 (APN 728-32-008 & 009). DA-03-13: Mission View-Mission Ranch**, by the following roll call vote: AYES: Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Carr.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the reading in Full of Ordinance No. 1766, New Series, Amending Development Agreement DA-05-01.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1766, New Series, by Title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1726, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DA-05-01 FOR APPLICATION MP 04-26: MISSION VIEW-MISSION RANCH TO ALLOW FOR THE INCORPORATION OF FOUR ADDITIONAL ALLOCATIONS FOR FISCAL 2006-07 AND AMENDMENT TO PARAGRAPH 14 MODIFYING THE PER UNIT PUBLIC IMPROVEMENT COMMITMENT (APN 728-32-008 & 009) DAA-05-01: Mission Ranch**, by the following roll call vote: AYES: Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Carr.*

17. VACATION OF A PORTION OF TAYLOR AVENUE – Resolution No. 5990

Director of Public Works Ashcraft informed the Council that Taylor Avenue, north of Peebles Avenue has been a dead end street for many years and that this is a house cleaning item to vacate the end of the public street.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Adopted** Resolution No. 5990, Vacating a Portion of Taylor Avenue.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Authorized** the City Manager to Sign Quitclaim Deeds on Behalf of the City.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Directed** the City Clerk to File Copies of the Quitclaim Deeds in the Office of the Santa Clara County Recorder.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Directed** the City Clerk to File a Certified Copy of the Resolution in the Office of the Santa Clara County Recorder.*

22. SOLID WASTE MANAGEMENT RATE ADJUSTMENT – Resolution No. 5991

Program Manager Eulo indicated that once a year, South Valley Refuse and Disposal Company is entitled to apply to the City to have the cap raised they can charge customers. He stated that the franchise agreement defines the formula that dictates the increase in the cap based on the changes in the Consumer Price Index at a rate of 80%. South Valley Refuse Disposal Company has submitted a timely application this year. He noted that the rate adjustment for the basic residential service will increase by 49 cents per month and will go up to \$22.31.

Mayor Pro Tempore Grzan indicated that the Utilities and Environment Committee reviewed the request for a rate increase and found the request to be in compliance. Therefore, the Committee is recommending Council approval of the rate increase.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Council Member Carr absent, **Adopted** Resolution No. 5991.*

City Council Action

OTHER BUSINESS

23. AWARD CONTRACTS FOR CONSTRUCTION OF NEW LIBRARY AND APPROVE CONSULTANT AGREEMENTS AND AMENDMENT FOR PROFESSIONAL SERVICES – Resolution No. 5992

Deputy Director of Public Works Bjarke presented the staff report on the recommendation to award construction contracts for the new library. He stated that at the Council's direction in 2004, the City employed an alternative method for bidding the library project; multi prime contracting. He indicated that multi prime contracting is a method where the City partners with a construction management firm to take on two roles that would occur in a contract of this size: 1) general contractor; and 2) construction management. By using multi prime contracting, the City will not have a general contractor, thus the multiple bid packages before the Council. He informed the Council that staff opened 19 bid packages that included a total of 78 bids. It is proposed to deliver the library by May 1, 2007; a 12-month construction schedule. He stated that in order to meet this schedule, the Council will need to award contracts this evening. He indicated that the current library budget is at \$17.5 million. Staff is recommending an increase to this budget by \$1.5 million to bring the total budget at \$19 million. He addressed staff recommendations as they relate to the construction contracts at a total cost of \$10.7 million. The additional funding will increase the construction contingency by \$200,000 for a total contingency of \$700,000. Staff is recommending the Council reject the bid relating to the glass and glazing portion of the project as only one bid was received; indicating that this bid was \$600,000 above the engineer's estimate.

City Manager Tewes confirmed that staff is recommending a budget increase of \$1.5 million for the reasons identified by Mr. Bjarke. He stated that staff is recommending the same financing plan that was identified in August 2004 that has been updated with current information. He noted this plan does not require the appropriation of additional Redevelopment Agency (RDA) funds. He clarified that the library project never required, nor now requires, the appropriation of discretionary general funds. He stated the library financing plan will not add to the City's operating deficit. However, the financing plan does have several funding sources, and requires the City to borrow against revenue from future impact fees and rental payments.

City Manager Tewes addressed the evolution of the financing plan and the important role the RDA played in the delivery of the library project. In the 1990s, the Santa Clara County Library Joint Powers Authority (JPA) committed to expand all the existing branches for which they were responsible; including Morgan Hill. There was a formula by which the County would provide capital dollars. This formula would result in \$4.3 million from the County JPA that would help build the Morgan Hill library. Instead of adding on to the existing library, there was a strong community sentiment to build a new library. Therefore, the Council considered a Redevelopment Plan in 1998 and adopted it in 1999; proposing a new library as one of its top priorities. The RDA plan was submitted to the voters in an advisory measure in 1998. The library, along with other projects, was approved by 71% of the voters. In 1999, the Redevelopment Plan and the library project were subject to a referendum. In 1999, the JPA realized they could no longer afford to meet this capital commitment for a new library in Gilroy, Milpitas and Morgan Hill. However, the JPA pledged \$584,000 in reserves to pay for some of the

upfront design costs for the library. There was a plan to seek state funding under the Library Bond Act. He indicated that the RDA was the only agency with sufficient resources to match a potential state grant and that \$5.4 million was initially allocated from RDA funds to match the state grant. Without the RDA, the City could not have applied for the grant. Although the City had a great library project, the City was unsuccessful in obtaining grants on two successive attempts. In August 2004, staff presented the Council with a financing plan that had several funding sources. He said that it was necessary to increase the amount of allocation from the RDA's tax increment and to allocate proceeds of land sales and loan repayments that the RDA was otherwise entitled to; allocating these funds to the library.

City Manager Tewes indicated that the Council and the RDA determined that in order to finance the higher priority library project, the City would defer the RDA's contributions to flood control until the extension of the RDA Plan discussed by the Council in August 2004. The balance of the library project would be paid by new growth. In August 2004, the Council increased the development impact fees so that new growth would pay its fair share. He noted that in November 2005, staff came before the Council to request additional allocation to which the Council approved \$510,000 to pay for anticipated costs attributable to escalation, at the time, and a slight expansion to the scope of the project. Of this amount, \$380,000 came from tax increment and \$130,000 from park funds.

City Manager Tewes indicated that the total funds available to construct the library are approximately \$19.1 million. The project budget is being recommended at \$19 million. He stated that the library needs no further allocation of RDA funds. Staff has the final accounting of \$584,000 in design costs that was promised by the JPA. Staff also has the business terms for a lease with the Library JPA, and has a better forecast of future development impact fees on new homes to be built over the next few years. He stated that staff proposes to issue bonds that would generate \$3.6 million. He noted that this was a very conservative debt plan since the annual payments could leverage an even higher amount. He reiterated that the financing plan before the Council is essentially the same plan as presented in August 2004; updated with current information. It was staff's belief this plan is sufficient to meet the \$19 million budget.

Council Member Tate indicated that there is a question whether county impact fees for the library will be collected. He inquired whether these impact fees were assumed in the numbers presented this evening.

City Manager Tewes said that in 2004, staff indicated that there was a potential source of funding; a County imposed impact fee for homes to be built in the unincorporated areas, similar to that of Morgan Hill. He stated that this source of funding was not included at that time, nor is it included as part of the funding plan today.

Mr. Bjarke clarified that the glass bid was \$600,000 over the estimate. It is staff's belief that it is prudent to include the \$600,000 in the budget, and hopefully rebid this portion of the project less than this amount. He noted that staff is requesting different actions be taken on some of the bid packages received. Staff recommends the following Council actions: 1) reject the glass bid and direct staff to rebid this portion of the project; 2) reject the low bidders on four of the packages as they were non responsive bids, and award to the second lowest bidders; 3) award to the lowest bidders for seven of the packages and waive some minor irregularities; and 4) proceed with standard awards to the lowest

bidders for the seven remaining packages. Staff is further recommending the Council award contracts to consulting firms to assist staff through constructions.

Mayor Pro Tempore Grzan referred to the glass and glaze bid package. He noted that the estimate was at \$719,000. He inquired whether this was a reasonable estimate at the time the bid package was prepared.

Mr. Bjarke responded that the estimate was based on empirical knowledge from other projects and from the construction management firm who helped put the bid together. Therefore, it was staff's belief this was a reasonable estimate. By being allowed to rebid, it is staff's hope to be able to receive a bid at the estimated amount. He clarified that staff is requesting the budget include the additional \$600,000. If the bid comes in at or below the estimate, there would be cost savings to the City.

Mayor Pro Tempore Grzan noted that the steel bid was significantly over estimate. He inquired why staff is not going out for a second bid on this item.

City Manager Tewes noted that TBI has indicated that steel prices have changed significantly. However, this item is a pacing item that will deliver the library on the schedule identified by the Council.

Tony Mirenda, President and CEO of TBI Construction and Construction Management, Inc., said that while steel prices have leveled, somewhat, he is seeing an increased amount of activity; specifically for hospital reconstruction. He said that a number of steel companies have full workloads through 2007. He indicated that steel is a primary critical path element, and has a large preconstruction component as it has to be designed and checked. In order to meet the construction schedule, he felt it would be appropriate to go to the second lowest bidder in this case. If you rebid this component, there would be no guarantee the City would get the same three bidders back. Based on the prices out on the market at this time, he was not confident the City would see a large enough savings between awarding to the second lowest bidder and receiving another bid. He said there may be a chance that bids may go up again based on the irregularities taking place in the steel market and activities contractors are seeing. Looking at the construction schedule, it was felt that going to the second lowest bidder, who has a complete bid package, would be an appropriate action. He indicated that at the time the estimates were put together in 2005, they applied an escalation factor of 5%. However, Katrina hit and double digit escalations are being seen again. He said that oil prices have seen a significant increase and the fabrication of some products, including steel and cement, are seeing instability and escalation factors back in the double digit area.

Mayor Kennedy opened the floor to public comment.

Carol O'Hare, president of the Morgan Hill Friends of the Library, stated that despite the best efforts of everyone involved in this project, the library has come in \$1.5 million over budget. She noted that staff has been able to come up with a plan to fund this amount. She requested Council approval of staff's recommended actions in order to move the new library project forward. Without Council approval, the construction of the library may be delayed, and may result in greater costs.

Chuck Dillmann noted that only one glass bid came in at double the estimated cost. He inquired as to the reason for the increase. He noted that inclusion of additional funding for the glass is less than 5% of the

construction estimate. He inquired whether enough action is being taken to ensure this is the last time construction costs go up.

Melinda Cervantes, Santa Clara County Librarian, thanked the Council for all its efforts and hard work over the last few years. She noted the City went through three cycles of grant applications for Proposition 14 funding. She said that everyone is excited about the project; noting that the community has come together to support the new library project. She applauded the Council in for its efforts in getting the library built, and looks forward to working with staff in seeing that it operates appropriately.

No further comments were offered.

Mayor Kennedy indicated that he spoke with City staff prior to the meeting. He stated that he has worked in project management and construction in the past, and that he is satisfied with staff's recommended actions. He noted that TBI has an excellent reputation as a construction manager. He indicated that the City has an architect on staff, project managers, engineers and the City Manager; an excellent team overseeing the library project. He was confident with staff's recommended action items.

Council Member Tate stated his concurrence with Mayor Kennedy's comments. He complimented staff on their recommended actions, noting that this is a great package staff has put before the Council. He felt the package submitted answered all questions. He noted the City proceeded with a multiple prime approach with the thought that it would simplify the process; resulting in lower costs. He felt that staff presented a package that would move the library forward, and stated his support of staff's recommended actions.

Council Member Sellers stated his appreciation of staff's work on this; particularly their comment regarding the \$600,000. He felt it appropriate for the Council to recognize there may be some savings, and that it is important that staff return to the Council to recognize cost savings. It is also important to note the City would not be building the library today had it not been for the RDA.

Mayor Pro Tempore Grzan said that although there are a few bids over the estimate, there were a number of bidders at or below estimates. He said there were a number of individuals who bid on the project to give him and others the confidence that there is a competitive bid before the City and that the City is receiving the best value for its dollars. He felt this will be a valuable project for the community.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** the Project Plan and Specification.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** the Financing Strategy as Outlined in the Memo and **Appropriated** \$1.5 Million Additional Funding as Recommended.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Rejected** Bid Package Number 11-Glass, and **Authorized** Rebid.*

- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Waived** the Minor Irregularities in Apparent Low Bid Numbers 7, 8, 9, 14, 15, 16, and 19 that do not Materially Affect Amount of Bid nor Provide a Competitive Advantage to Low Bidder as Shown on Bid Results Summary and as Reviewed by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Rejected** Non-Responsive Apparent Low Bid Numbers 3, 4, 13, and 20 as Shown on the Bid Results Summary and as Reviewed by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Awarded** Construction Contracts for Various Prime Contractors in the Total Amount of \$10,701,023, per Bid Results Summary; Subject to Review and Approval by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Authorized** the City Manager to Execute Consultant Agreements for Professional Services During Construction, per Staff Report Memo; Subject to Review and Approval by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Authorized** the City Manager to Execute a Sixth Amendment to the Noll & Tam Design Agreement, per Staff Report Memo; Subject to Review and Approval by the City Attorney.*
- Action:** *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Adopted** Resolution No. 5992, Declaring the City's Intent to Reimburse Certain Library Project Expenditures from Bond Proceeds.*

18. GENERAL PLAN AMENDMENT, GPA 05-05: CITY OF MORGAN HILL-URBAN LIMIT LINE (ULL)/ GREENBELT STUDY IMPLEMENTATION

Contract Planner Bischoff presented an overview for items 18, 19 and 20 as there were interrelationships between the three items. Regarding the ULL/Greenbelt Implementation, he indicated this is an item that was before the Council in April and June 2005 where it received the final report of the advisory committee regarding the creation of a greenbelt around the City. He said that the ULL is the culmination of three years of work by the ULL Committee, as well as the Planning Commission, in trying to draft a greenbelt plan for the City. He stated that the ULL Committee spent a lot of time deliberating, put a lot of hard work into this item, and came up with good solid recommendations that were presented to the Council last year. What is before the Council this evening is the implementation of the greenbelt. He identified the proposed amendments to the general plan text and certain maps contained in the general plan. The text amendments clarify the intent behind the greenbelt plan, defines where the ULL will be, the greenbelt areas, priorities for implementation of the greenbelt, etc., as

contained in the Council's agenda packet. He indicated that the ULL is shown on the diagram that has four areas where the urban growth boundary is proposed to be constricted, and two areas proposed to be expanded: West Hill Church area at DeWitt and the Oak Meadow Plaza property. He addressed the non binding Memorandum of Understanding (MOU) the City entered into with the property owners to better define what the City would be evaluating as part of the environmental document.

Mr. Bischoff addressed the Oak Meadow Plaza by stating that the property owners are requesting that 20-acres be added to the urban growth boundary and the urban service area. They are proposing that 14-acres be annexed into the city limits and be designated as open space, by means of an open space easement, to ensure that it will not develop. As the County and LAFCo do not like partial properties to be brought into city limits, the proposal is to bring all of the property into the city limits; recognizing that only 20-acres would be brought into the urban growth boundary and urban service area.

Mr. Bischoff addressed agenda item 20, the Black Rock application. He indicated that the ULL Committee recommended that the Black Rock property be included in the urban limit line, but took no action with respect to including the property within the urban growth boundary, or designating it for urban use. The Committee stated that when this property is ultimately developed, the density should transition between the 1 acre lots being developed on the Quail Creek project and 2½ acre lots, similar to the ones adjacent to the southwest, in the County. He informed the Council that the owners of the property have submitted applications to include all of the property within the urban growth boundary and to designate it residential estate, 1 unit per acre. The property owner has also filed applications to include the property within the urban service area, prezone the property R1-40,000/RPD and annexation. He stated that the RPD proposal would be consistent with the recommendation of the advisory committee regarding transitioning and density from 1-2½ acre lots.

Mr. Bischoff indicated that in June 2005, the Council directed staff to prepare general plan amendments that would implement the greenbelt study. The Council also directed staff to conduct an environmental evaluation on the potential impacts of the amendments. Following this direction, the Oak Meadow Plaza proponents submitted applications to expand the urban service area for the 20-acres; including a request to annex and prezone the property. It was after the Council's direction that the owners of the Black Rock properties filed applications for general plan amendments, etc. Based on the relationships between all properties, he felt it made sense to consider all applications under one single environmental evaluation.

Mr. Bischoff addressed the environmental evaluation conducted, indicating that the evaluation was done at a program level. Being addressed are the general plan amendments and annexations. The environmental evaluation does not address a specific development proposal. He indicated that the environmental document has been prepared in general terms. He said that the finding(s) of the document is that the overall amendments to the general plan would not have significant adverse impacts. However, the study identified three areas where the urban growth boundary is proposed to be expanded that have potential significant adverse environmental impact(s). The study identified mitigation measures which would reduce these impacts to a less than significant level. As a result, a mitigated negative declaration is proposed to be adopted. He informed the Council that staff received a number of comments from individuals regarding the mitigated negative declaration, and that many of these comments have been included in the Council's packet as well as responses. He indicated the City has received additional

comments that staff will package with other comments; returning with these comments to the Council on April 19; along with a mitigated negative declaration and mitigation monitoring program.

Regarding the public process for the three agenda items, Mr. Bischoff said that copies of the proposed general plan amendments were sent to all advisory committee members who served on the ULL/Greenbelt Study Committee. He indicated that the Planning Commission conducted two hearings regarding these amendments: March 14 and March 28. He informed the Council that a lot of testimony was received at these meetings, and the letters received were included in the Council's agenda packet. Staff has provided responses to comments for correspondence received prior to the March 28 Planning Commission meeting. He informed the Council that the testimony presented to the Planning Commission focused on four areas: 1) the area located on the south side of Spring Avenue, east of DeWitt Avenue; 2) the west side of Dewitt Avenue, south of the area proposed to be included in the urban growth boundary; 3) the 20-acres proposed to be included in the urban growth boundary on the west side of Sunset; and 4) the Black Rock property located on Santa Teresa-Watsonville Road.

Mr. Bischoff addressed the comments and actions taken by the Planning Commission with respect to these four areas.

1. The Planning Commission received testimony from property owners adjacent to the Westhill Church area. The owners questioned why their properties were not being included in the urban growth boundary as it is being recommended that their properties be included in the ULL. He said that at the time the ULL Committee reviewed the area, they were not aware of specific development applications or an interest for annexation. Therefore, the properties were not included in the urban growth boundary. The Planning Commission is recommending that the properties be included in the urban growth boundary.
2. The two property owners in the DeWitt area looked at the area being proposed to be included and requested their properties be included as well. He indicated that the ULL Committee dealt primarily with areas where urban services were being provided. He said that sewer and/or water is being provided to a number of parcels along DeWitt Avenue as well as the Church. He noted that two of the parcels do not receive city sewer or water service. Therefore, the ULL Committee did not recommend this area be included in the ULL or urban growth boundary.
3. The Planning Commission received significant testimony with respect to the Oak Meadow Plaza area. Although the property owner requested 20-acres be included within the urban growth boundary, the Planning Commission is recommending only 19-acres be included. He stated that the ULL Committee recommended that up to 20-acres be included. However, all 20-acres need to be on slopes of 10% or less. Engineers have found that there are not 20-acres on slopes of 10% or less, but only 19-acres of 10% or less slope. The Planning Commission believes the 10% slope, which equates to 19-acres, would be appropriate. Another issue the Planning Commission considered dealt with the creation of an open space easement over the 14-acres. The Planning Commission felt it would be better to have the property deeded to the City versus remaining in private ownership. He said this recommendation is, in part, associated with the issue of the desirable infill policy. The Planning Commission felt comfortable having these 14-acres under city ownership as opposed to having it in an easement. He clarified that the Planning Commission is at a difference from the

applicant in two regards: 19-acres to be included instead of 20-acres, and that the open space be deeded to the City.

4. Regarding the Black Rock application, he indicated that there were a couple of pieces of correspondence received. Members of the public who attended the Planning Commission meetings spoke in opposition of including the property within the urban growth boundary or designating it for urban use.

Mr. Bischoff informed the Council that in addition to the correspondence included in the Council's packet, there is correspondence on the Dais. He indicated that letters from Sherri Sliter, Craig & Maria Hodges, three letters from the D'Elia family, Donna Agneta and Bart Hechtman were received. All letters, except that from Mr. Hechtman, are in opposition to the Oak Meadow Plaza project. Mr. Hechtman, attorney for the Oak Meadow Plaza proponents, is requesting that 20-acres be included in the urban growth boundary instead of the 19-acres. Mr. Hechtman requests the issue of whether or not the 14-acres is to be owned by the City or privately owned with an open space easement be deferred to a development agreement phase. With respect to the Black Rock property, he indicated that a letter was submitted by John Kilkenny. The Council also has the Planning Commission minutes from the March 14 and March 28 meetings on the Dais.

Mr. Bischoff stated that it is staff's recommendation the Council open the public hearing and receive public testimony, Council to ask questions of applicants and staff; and continue the matters to April 19. He requested the Council identify any additional information it needs. Staff will then make sure it provides the Council with a full packet of information at the next meeting. Also, the Council to identify the direction it wishes to proceed. Direction will assist staff in providing resolutions of approval for Council consideration at the April 19 meeting. At the April 19 Council meeting, staff will have the mitigation monitoring and reporting plan available.

Mayor Kennedy announced that it is not the Council's intent to make any decisions this evening. He said the Council will hear public comments, discuss the items, provide direction, and ask questions of staff. The Council will then continue these items to the meeting of April 19, with the possible exception of the desirable infill agenda item, as the Council may wish to take action on that item.

Mr. Bischoff said the Council may wish to consider opening the public hearing for agenda items 18 and 19; hearing these items concurrently. Should the Council come to a conclusion on these items in April, the next steps to move the urban limit line forward would include an industrial land study to determine what actions should be taken for the southeast quadrant. Once the industrial land study is completed, it would be the expectation that the Council would decide the next steps for the southeast quadrant. He stated that another item included in the implementation plan is that the City would begin to look at the specific implementation strategy. He said the City would look at using both regulations and acquisition as a means for preserving greenbelts. He informed the Council that staff is working with the County toward amending their hillside regulations. With respect to acquisition, it is being recommended that this be a part of the program where the City looks at buying some at risk, highly visible properties; hopefully as easements and not fee title. However, this plan would need to be developed. He said the ULL Committee is recommending priority areas where the City should be focusing its energy.

Mayor Pro Tempore Grzan stated that he has a concern with regard to Hill Road. He would like to study this area further when it comes to the southeast quadrant, east of Hill Road.

Council Member Tate disclosed that he met with a group of neighbors this afternoon.

Mayor Kennedy disclosed that he met with Jeff Pedersen.

Mayor Kennedy opened the public hearing for agenda items 18, 19 and 20.

Rocke Morton, a 30+ Spring Avenue resident, noted his property is not currently included in the ULL. He indicated that the city limits borders his property for approximately 50-100 feet. He requested his property be included in the ULL, indicating that his property is less than 10% slope.

Mr. Bischoff said the ULL Committee recommends property fronting Spring Avenue be included in the ULL who are receiving urban services. He indicated that the ULL is proposed to go along the northern boundary of Mr. Morton's property. He noted that Mr. Morton's property does not front Spring Avenue as there is another property between his property and Spring Avenue.

Jeff Pedersen stated that he would address agenda items 18 and 19. He indicated that he attended both Planning Commission meetings where these items were discussed; offering his comments. He addressed three basic concerns: 1) process; 2) need, and 3) density. He stated that he appeared before the Council on February 29, two days after a number of Parkside residents learned that the Council approved an MOU for the development of the Oak Meadow Plaza property. At the February 29 meeting, he questioned how the Council could approve the MOU without following the proper process. He expressed concern that the Council has gone on record taking discretionary actions; approving an MOU without an environmental assessment. He expressed concern that there is prejudice, at this point, based on earlier Council action. At the Planning Commission meeting, it was found that not only was the Council going on record approving the project before hand, but that there was no consultation on the initial study by LAFCo or the State Clearinghouse. He noted that LAFCo responses came to the City after the first meeting of the Planning Commission. He felt the comments at the Planning Commission and the Council meetings should tell the Council the negative declaration is not adequate. He noted the City has a greenbelt planning concept and is imposing a ULL that is not complete. He felt the environmental review process conducted thus far is inadequate and warrants an EIR. He did not believe the City needs to annex land if it really wants to preserve open space. He noted the Oak Meadow Plaza parcels are currently zoned County agricultural and are Williamson Act property. He said that it is hard for residents to understand how the City will protect open space by allowing development to occur; creating additional sprawl. He inquired how the approval of 60-units was determined.

Zoe Gustlin stated that she read through the ULL document and found it difficult to understand. It was her understanding the document was for a 20-year growth span. She felt the process is turning into how you can move the ULL in order to get property into the City and annexed. In looking at the ULL drawn according to the ULL Committee, it is now being discussed how you can move the concept of the lines out and get property added to the ULL. She said that in looking at the Sunnyside/Santa Teresa line, you will see that the property is a gateway to the western foothills and is the gateway to the scenic beauty of what Morgan Hill residents like. If you start moving the line across Sunnyside and Santa Teresa, the City is moving into the foothills. Doing so will start to destroy the beauty that sits there. She requested

the ULL be defined so that everyone knows where it is before it is moved. She did not believe it was the City's intent to keep moving the line into the western foothills. She requested the Council take a look at what the ULL is, where it is drawn, and its intent. It was her sense from the Planning Commission that it was a way to get property from developers annexed into the City. She requested the area be kept green and beautiful, and not let the City start encroaching to the west. It was her belief that there was plenty of infill and downtown land to focus development upon without the need to bring development out to these areas.

Jon Maxey stated he owns property contiguous to property being considered be included in the ULL. He would like to obtain city services; primarily water. He said that water is available on the street, but that he cannot have city water unless he is in the ULL. He stated that he was under the impression that had he attended the first meeting, his property would have been included in the ULL. He requested Council consideration in bringing his parcel into the ULL so that he can have access to city services.

George Thomas, Jr. indicated that he served on the ULL Committee. He stated that he was disappointed that the Committee did not get notified when this issue first came before the Council as he would have liked to have made his comments then. He stated that he met with Mayor Kennedy and Council Member Tate about this concern; acknowledging that it was an oversight. He requested the Council adopt the recommendation of the ULL Committee along the east hills. He said that his family is not interested in development, but do not want to leave this section of Hill Road surrounding by the City, Holiday Lake, and Cochrane Road, as an island for the future. His family would feel a lot safer with the City of Morgan Hill and the citizens' residential development control system. He was not talking about changing the lot sizes or discussing urban development. He noted the City adopted recommendations for "feathering" of larger lot sizes toward the hills. He noted the City abuts the family's 88-acres and that they have problems with enforcement of zoning issues with the County at this time. He is concerned with private sewer plants in the future that would allow more development in the County than is seen today. He did not know what the County will allow to develop if the City does not control the area. He said that there is a lot line being created on one of the urgent parcels discussed by the ULL Committee. He indicated that there are surveyors on the 72-acre property looking at creating three parcels in excess of 20-acres each. He felt this was a key piece of land, and that this would be a good time for the City to approach the property owner before he completes the process in order to preserve the hills above 10% slope.

Ron Key introduced Pete Gale, residents on Spring Avenue. He indicated that he submitted a letter to the Planning Commission and resubmitted the letter to the Council. He pointed out that the letter submitted this evening contains additional signatures. He urged the Council to follow the Planning Commission's recommendation for inclusion of the properties listed in the letters to the urban growth boundary.

Michele Beasley, representing Greenbelt Alliance, indicated that the Greenbelt Alliance submitted comments to the mitigated negative declaration. Since the establishment of the ULL is creating an envelop for future development, she felt it reasonable that development would occur on what is currently prime farm land. She felt it may be a good time to consider something along the lines of an agricultural mitigation policy; perhaps one acre for one acre, which could also be used as a tool to permanently protect agricultural lands on the other side of the ULL. She stated that the creation of a greenbelt area is a great way to maintain the quality of life in Morgan Hill and promotes centered growth. However, now

that the ULL is no longer considered permanent, she felt it is a moving target as more properties are being included in the ULL. This could threaten the rural charm that is part of Morgan Hill. It will also define the community as Morgan Hill continues to sprawl out instead of using existing vacant land that is within the urban growth boundary. She recommended the City place more emphasis on investing in the downtown, the vibrant center of community life.

Brian Schmidt stated that the Committee for Green Foothills submitted comments to the Planning Commission. After submitting comments, he realized there was a mistake in discussing Black Rock. He requested the Council disregard this particular comment in his letter. He said that one theme that can be seen tonight is confusion about what the ULL means. He felt the confusion extends to LAFCo. He suggested a way to clear up this confusion; treat the ULL as a second urban growth boundary as this will redirect growth. He felt that the conversion of farm land needs to be addressed in an environmental impact report. The City could extend the urban growth boundary with subsequent approvals being necessary before farm land conversion could occur. It was his belief that individuals would agree that soon after the ULL is established, individuals would be approaching the City to be included within the urban growth boundary. Therefore, an impact would result. He raised a concern regarding wetlands. He said that there is a statement contained in the negative declaration that states that if a wetland is not a jurisdictional wetland, under the Clean Water Act, then there is no impact. He stated that the Clean Water Act is limited to what wetlands it can cover. He noted that isolated wetlands are not covered by the Clean Water Act. However, he felt isolated wetlands can still have a tremendous environmental value. He recommended the Council study all wetlands and mitigates all impacts associated with wetlands. He further recommended the Council proceed with the greenbelt recommendations as it can proceed independently. Further, that the Council take no action on the ULL requests; sending them back for an environmental impact report.

Bill McClintock spoke on behalf of the Oak Meadow Plaza project. He informed the Council that Bart Hechtman was not in attendance this evening, but that he submitted a letter for Council consideration. He was pleased to see the City is moving forward with a greenbelt study as it is important for land owners to know their position long term. He said that the reason Oak Meadow Plaza is before the Council is because there is eminent development rights associated with the hillsides. With this eminent development and the greenbelt study moving forward, he felt this to be a golden opportunity for the City to preserve pristine lands in the City for long range public use. He stated that Oak Meadow Plaza will be providing 84-acres of open space in exchange for support of their application for urban service area, urban growth boundary and annexation. He said that the hill may not be eminent for development and sees the area being used as hiking trails and pathways that circulate around the hill to the top. He noted that there are 50+ acres of land already in open space in a development agreement to the north. Therefore, there is significant acreage for something to take place in the city. He said the reason that larger acres are desired is to allow for bigger back yards, not to gain additional units. He said that 60-units are being planned for this property. With regards to Mr. Pedersen's comments about the process, he said that LAFCo will be hearing this application and that it is his hope the City will recommend approval to LAFCo.

Angelo Starink addressed the annexation of the Oak Meadow Plaza project. He stated that in 1999, when he and his wife were looking for a home, they found their home adjacent to the Oak Meadow Plaza property. His builder told him the Oak Meadow Plaza was in the County and could only develop 1 house per acre. He verified this information with the City and proceeded to purchase his home. He stated that it

was disappointing to learn the City is considering annexing the land and the development of 60 homes. He felt the builders of the Oak Meadow Plaza are only concerned about maximizing their profits. He inquired whether the City considered allowing the development of 20 homes, still resulting in a profit for the developer. He recommended the City maximize the benefits for citizens, and not maximize the profits for builders.

Desiree Lehrbaum, a Parkside resident, indicated that she and her husband considered moving to Morgan Hill in 1999 as they wanted to get away from the cement development of San Jose. Prior to moving to Morgan Hill, they contacted the planning department to understand the intention for the acreage surrounding Parkside. They were informed that development would be acreage development. She felt that a lot of the neighbors have made a good faith effort in investigating the future growth plan; acknowledging that Morgan Hill has a great growth policy in place. She echoed a lot of what she has heard this evening regarding identifying the long term goals for what is to be achieved for Morgan Hill and how to manage growth. She felt good policies and rules are put into place and then managed by exception. As a citizen of Morgan Hill, she would like to understand how you affect changes in the process when changes come forward. While she appreciates the work of the ULL Committee, she did not believe the Committee took into consideration the impacts to existing neighborhoods. Placing access for 60 homes in front of her on a road that currently dead ends, would equate to approximately 500-650 additional car trips per day. She felt this to be a significant change to the way of life. While the 85 acres may sound like a good deal for the City, she requested the Council consider how development will impact existing neighborhoods.

Bill Moreau stated that he and his wife moved to Morgan Hill almost 3 years ago. They moved out of San Jose because it was starting to look like Los Angeles. He was told by his real estate agent that the property owner could not construct high density on this property. He indicated that he submitted a letter to the Planning Commission and one to the City Council. He noted a letter was submitted in support, but that it was his understanding that this letter was from the attorney representing the landowners. He noted that everyone, except the developer, is opposed to development. He expressed concern with drainage, noting that the baseball fields are under water, and that additional land development in the area would result in additional runoff. He clarified that he was not opposed to development and that he would find it acceptable to see 20-acre subdivisions. Development of 60 homes would give a San Jose feel with all the traffic it would generate.

Maria Hodges agreed with Bill McClintock that the lots should be bigger, but not in the way he was addressing. When you have open space, she did not believe you would want cramped high density housing. She recommended larger lots feathering out with a nice transition into the hills be considered. She stated that she and her husband oppose the annexation and zoning application for the Oak Meadow Plaza. She felt there was enough land within the city limits to build for many years to come. She did not believe this was the time to bring more land into the City. Although the City has expectations of receiving open space in return for housing development, she requested the City consider what it will be receiving in return for concessions. She felt the City needs to be careful of the return on investment for special considerations to land owners and builders. This consideration should apply to annexation of lands so that Oak Meadow Plaza lands would fall within the annexation requirements of being adjacent or being a certain distance from city land. While Morgan Hill will receive open space, she noted that some of this space is not buildable. She did not believe that a tradeoff for land that is not buildable is a tradeoff. She felt it admirable that the City wishes to maintain open space. However, a question needs to

be asked whether the 12,000 square foot lots were appropriate for the 19 acres. It was her belief that an appropriate alternative would be to have one acre lots feathering to 2-5 acre lots; providing a much better transition to the open space.

Mayor Kennedy indicated that there was a lot of confusion regarding the ULL and the greenbelt. He stated the City had a goal to establish a greenbelt around Morgan Hill as was identified in the City's general plan. The mechanism used by staff and the ULL Committee to establish the greenbelt was to create an urban limit line. He stated that the urban limit line was intended to be the ultimate growth limit line. He said that there is a 20-year urban growth boundary line in place today that is subject to change. This urban limit line was intended to be an alternate growth boundary line. Outside of this line, greenbelt would be designated on maps and plans. The City would take action to acquire lands or somehow permanently guarantee they would stay in a greenbelt. He said the goal with the Oak Meadow Plaza is to try to acquire and preserve as much of the property in open space as possible; creating a greenbelt. He indicated that the Bevelaqua property has entitlements for development under County rules. He stated that 10-12 housing units could be allowed under the County's ordinance, and the City would have very little control over where houses would be built. They could be placed on ridgelines or in locations that would destroy the views of the residents of Morgan Hill. An effort was made to come up with a plan that would try to create a greenbelt and preserve open space. He said that if you cannot acquire or acquire a conservation easement, the property would eventually develop.

Mr. Bischoff indicated that the ULL Committee recommended, in the definition of the urban limit line that it be referred to as the ultimate boundaries of the City. When this matter was brought before the Council in April and June 2005, there was some question whether or not the ultimate boundaries was appropriate or possible. Based on the advice of the City Attorney, the language has been modified. He noted that the specific language states that it is a longer term version of the urban growth boundary and that it is intended to reflect the City's long term policy for the growth of Morgan Hill beyond the 20-year timeframe of the urban growth boundary.

Mr. Bischoff noted that a speaker stated there was no early consultation with LAFCo and the State Clearinghouse. While it is true there was not early consultation with LAFCo, the information was provided to the State Clearinghouse. The City received a letter from the State Clearinghouse indicating that there were no agencies desiring to comment. He noted that the City has received a letter from LAFCo. There was a comment made that the assessor's records show the 20-acres in the Oak Meadow Plaza property under the Williamson Act. He clarified that the property is not under the Williamson Act. He indicated that the property owner filed for non renewal of the Williamson Act contracts in the early 1990s and that the County misplaced the application. It was in the last couple of years the County was able to straighten this out.

Regarding the confusion about the urban growth boundary and the urban limit line, Mr. Bischoff noted that it was suggested that the urban growth boundary could be expanded without the need to mitigate for the loss of agricultural land. He stated that this is not a true statement. He noted that in the review of the Black Rock application, it was found that it was agricultural land and that a mitigation measure has been included for the loss of agricultural land. Therefore, any expansion of the urban growth boundary would require review of environmental affects, including impacts on agricultural lands.

Mr. Bischoff said that the interest in preserving the hillside (the Bevelaqua Ranch) existed for a long time. He noted there is an action item in the City's general plan that states the City should conduct a greenbelt study that includes an evaluation of the prominent hillside bounded by Edmundson, DeWitt, Spring and Del Monte-Sunset; including the properties on the eastern face of El Toro. Strategies are to be included for the preservation of these important visual resources. Therefore, the direction to the ULL Committee to come up with a solution on preserving these lands dates back to the 90s. It was his recollection that at the time the ULL Committee reviewed this issue, the property owner was interested in including some land adjacent to Sunset within the City. The desirable infill policy the City has in place states you cannot annex more than 20-acres of land. Therefore, the 20 acres came from this. It was also his recollection that the ULL Committee was looking at something that would provide a transition from 7,000 square foot lots from the Parkside-Kendall Hill development up to the open space so that there would be some feathering provided. This was the reason they looked at a lower density. He noted the City has a zoning category of R-1-12,000. Having R-1-20,000 square foot lots was not raised at the Committee level. There was discussion that should the land owners sell each of the lots individually in the county, they would realize a certain amount of money. However, if they were not allowed to site homes on prime locations, there is a lower value that could be achieved. Thus, the request for 60 units.

Ms. Molloy Previsich responded to the comment that approval of the MOU without CEQA review was inappropriate. She clarified that the structure of the MOU was carefully worded to state that the purpose of the MOU was to define a project description on the part of the property owners. She noted that the City is one of the property owners of land involved in the proposed project. Therefore, the MOU's intent was to clarify what was being proposed by all property owners, including the City. This is a non binding agreement and that it was defined so that the environmental review would address the project description. She noted that the environmental review has been completed, a mitigated negative declaration has been prepared, and the City is proceeding with the public hearings. Therefore, all possible actions are still open for Council consideration. She stated that staff supports the mitigated negative declaration as the appropriate environmental document, and does not believe an EIR is necessary.

Mayor Kennedy noted that it was suggested by Ms. Hodges that perhaps one solution would be to feather lower density as a compromise. Instead of 3 units per acre, the City could approve 2 units per acre and that development is feathered so that it does not become a hard edge; blending into the surrounding area. He requested that staff take a look at this to see if this solution will work.

Council Member Tate agreed the City wants to get the benefit of having the open space dedicated and not having houses built on ridgelines. He felt it worthwhile pursuing open space. However, the question is how much you pay for the open space. When you allow 5 homes in the County, plus 60 additional units, he felt this too high a price to pay. Further, it does not include the feathering as suggested by the urban limit line. He supported looking at the feasibility of creating ½ acre lots feathered out to full 1 acre lots (less dense development). He stated that the preservation of open space is worth pursuing. He felt the need to preserve open space exists, but not at the density being suggested.

Mayor Pro Tempore Grzan indicated that the Council considered this recommendation at an early date where he informed the Council that there were a number of residents who were concerned about the development of homes behind their homes. At that time, he did not vote in support of the request. He felt the proponents of the Oak Meadow Plaza development were getting a great deal. He suggested

eliminating the 60 homes and pursuing another agreement. He recommended the City pursue an agreement with the County that would protect lands in the unincorporated/hillside areas.

Council Member Sellers said that there are three significant issues that need to be reviewed and considered: 1) Projects need to make sense in terms of their contiguousness/adjacencies. 2) Adding any additional lands should require significant public benefit/public investment. 3) There should be substantial mitigations of the impacts for allowing these projects to be incorporated. He felt there were a lot of unanswered questions. He recommended that staff elaborate on what will need to happen in order for a single home to be built in this valley. He acknowledged that plans have not been submitted or prepared for potential development. An elaboration on what is being proposed would be helpful to him, and perhaps the community.

Council Member Tate clarified that his comments only addressed the Sunset area, not the area along DeWitt or Spring Avenues. He noted the Council has a recommendation from the Planning Commission to include all properties along Spring Avenue, except Rocke Morton's property because his property does not front Spring Avenue. There is no recommendation to include the two lots that want to be included on DeWitt Avenue. He did not believe it made sense to exclude the two DeWitt lots because they are surrounded by the City. He felt it was the Council's intent to have a boundary that remains an ultimate line, even though it cannot be stated it is an ultimate line. He felt this an area that would be changed at some time in the future.

Council Member Sellers agreed with Council Member Tate as it relates to the ultimate line. He felt the Planning Commission had a reason for recommending inclusion of lands that had existing city services, and not include lands that did not have city services. He requested staff provide an explanation why these two parcels were not recommended for inclusion and the possible benefits that inclusions would give the City.

Mayor Kennedy noted that the ULL follows Hill Road from Main to Dunne Avenues. Mr. Thomas is suggesting that the line be moved further to the east. He noted that this was the subject of a lot of discussion at the ULL Committee level. He requested Council thoughts on this particular issue.

Mayor Pro Tempore Grzan recalled the discussions at the ULL Committee level about the Hill Road area were contentious and that there was a close vote. It was staff's initial recommendation to follow Hill Road. When the item was reviewed by the Council, the Council made the determination that staff's recommendation was the proper determination. He still believes this to be the proper determination. He agreed the land east of Hill Road is precious as it moves up toward the foothills. He indicated that Morgan Hill is known for its open space and recommended their preservation; extending to Maple Avenue.

Council Member Tate said that he likes the arguments as presented by Mr. Thomas as they give pause to reflect on what is trying to be accomplished. He noted that there are requests to extend the urban limit line beyond the Black Rock and the Oak Meadow Plaza areas; noting that the City has annexation requests for both properties. When the City has control, there is pressure for development. He felt the purpose of the study was to define the areas where there are limits and the City does not want to see development. The suggestion of working with the County and trying to get cooperation in terms of having control of these areas is a good way to go.

Council Member Sellers felt that Mr. Thomas' comments were somewhat counter intuitive to state that the City needs to protect the east foothills from the County that has a much lower density. He noted that there has been significant growth in Morgan Hill over the past years. It has to be acknowledged that there will be growth. He has advocated that more growth is needed in the center of the City and the contiguous areas. The City needs to figure out what the future will hold and the best course of action to take; given the fact the City cannot predict the future. He inquired whether it would be better to bring hillside areas into the City so that it can be protected in perpetuity, or to leave it in the County where there is less pressure to develop.

Mayor Pro Tempore Grzan noted the staff report for item 18 contains a number of descriptions for policies. He felt that some of the strikeouts proposed in the policy weaken the intent of what the Council wants to do. He referred to item 7, paragraph 3.4, page 171. This statement would allow the Council to look at expanding the urban growth boundary line within the ULL every five years.

Mr. Bischoff clarified that staff found that a lot of the language did not make sense. Staff also thought two items were contradictory and confusing. The sections talks about ensuring the City has a 20-year supply of vacant developable land within the urban growth boundary. However, it did not talk about what happens if the City drops below the 20-year supply before the major updates to the general plan. The modifications proposed would allow expansion of the urban growth boundary with a major update of the general plan, or at such time the City finds it has less than a 20-year supply. He did not believe it would allow a lot of permissiveness. He noted that evaluation of the supply of land every 5-years already exists and is not proposed to be changed.

Mayor Pro Tempore Grzan did not believe the residents in attendance would want to return to the City in a couple years to address the issue again. It was his belief that the intent of having a ULL and having it permanent is to give the residents some sense of comfort that precious open land and the rural atmosphere can be preserved.

Mr. Bischoff said that if it is the goal to ensure that an urban growth boundary has a 20-year supply, the City needs to evaluate this supply periodically. He said that the words can be changed, but that evaluating the supply of land every 5-years to determine whether there is a 20-year supply is an appropriate thing to do.

Mayor Kennedy recommended the use of smart growth concepts. He felt the City needs to change the way it looks at the future supply of land; developing upwards instead of outward. Maybe the City needs to make the urban growth boundary a more rigid requirement so that when the City looks at the future needs for housing, the City looks up instead of outward.

Mayor Pro Tempore Grzan suggested that the decision of where the line is to be drawn be taken to the voters. Once approved by the voters, the only way the line can be changed is by the voters. Should the City determine it needs additional land in the future; the voters will decide whether it will take in more land as opposed to five members on the Council. He would advocate bringing this issue to the voters sometime in the future to make some permanency to the line.

Council Member Sellers cautioned against stating the City will come up with a solution in perpetuity. He felt that citizens in the community and members of the Council have to be diligent and cautious. He noted that a majority of residents moved to Morgan Hill because of the policies established 30-years ago. He did not agree with the statement of telling individuals that it will never be an issue again as it will always be an issue. He wanted to be cautious that you never allow complacency to set in the community as this is something the City will always have to be diligent about.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Continued** agenda item 18 to April 19, 2006.*

19. URBAN SERVICE AREA APPLICATION, USA-05-02/ ZONING AMENDMENT APPLICATION, ZA-06-01/ ANNEXATION APPLICATION, ANX-03-01: EDMUNDSON-OAK MEADOW PLAZA

See comments as listed under agenda item 18.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Continued** this item to April 19, 2006.*

20. GENERAL PLAN AMENDMENT APPLICATION, GPA-05-06/ URBAN SERVICE AREA APPLICATION, USA-05-01/ ZONING AMENDMENT APPLICATION, ZA-05-27/ ANNEXATION APPLICATION, ANX-05-18: SANTA TERESA BOULEVARD-BLACK ROCK

Mayor Kennedy opened the public hearing.

Zoe Gustlin said that as much as she would like to see the city limit along the Sunnyside-Santa Teresa boundary, this may or may not happen. She requested the Council consider that the property adjacent to the Black Rock development to be rural. In looking at what happened when development occurred at the corner of Watsonville and Sunnyside, city standards were imposed. Now, at the intersection of Sycamore and Sunnyside, you have lines drawn all over the street that are confusing. There are also street lights every 20 feet that light up the area. If the City is going to allow development in these areas, she requested that thought be given to city standards and what they will look in this area as it is too much over kill. She also noted that developers are installing cement walls along rural areas (e.g., Sunnyside and Sycamore Avenues). She recommended the installation of see through fencing in the future. She further requested the City change the standards to compliment rural areas. She noted that there are three pieces of land that are in the same position as the Black Rock property adjoining Sunnyside: the horse ranch at the corner of Sycamore and Sunnyside, and the two properties located along Sunnyside, between Watsonville Road and Sycamore. These properties have the same look and feel as the Black Rock property. She felt this whole stretch of land needs to be thought about; not allowing piece meal development to occur. She recommended that an urban limit line be placed along Sunnyside and Santa Teresa.

John Kilkenny, Sycamore resident, read his prepared comments into the record. He noted that voters in Morgan Hill approved Measure P in order to regulate residential growth and the expansion of the City's urban service area from future residential development, with restrictions. He said that the restrictions prohibit the City from requesting LAFCo approval of expansion until there is less than a 5-year supply of vacant residential land within the current city limits. He acknowledged that there are exceptions to be used only when the City goes under the 5-year supply. He referred to exception 4 where it states that inclusion of an area must beneficially affect the general welfare of the citizens. He only sees a benefit to the developer with this proposal. He noted that LAFCo sent a letter to the Planning Commission on March 28 stating that there are many acres of vacant land within the City's urban service area and the urban growth boundary. He felt it premature to create a boundary that includes additional lands before the current vacant lands have been used or built. He said that in looking at this property, it is hard to figure out how it can be considered infill by the intent of Measure P. He stated that he was in attendance at the March 28 Planning Commission meeting and that he was disappointed by the outcome of the vote for annexation of the Black Rock project. As a 20-year resident of Morgan Hill, he was surprised with what he observed at the Planning Commission meeting. He felt that decisions were made before the Planning Commission meeting, and that the comments of the residents would not have made a difference on the outcome. Should the Council approve the Santa Teresa-Black Rock request, he felt it would open the door to consuming the scenic areas of Watsonville Road, Sunnyside and Sycamore Drive. He felt the area was one of the charms of west Morgan Hill and is the site of many recreational activities for families of Morgan Hill. It is also a gateway to vineyards, wineries and a drive to the coast. He felt the Planning Commission should be working on true infill and stop pushing the boundary outwards. He stated that individuals move to Morgan Hill to get away from San Jose sprawl, and did not want Morgan Hill to become another San Jose. He stated his opposition to the applications.

Rocke Garcia, applicant, stated that he will reserve his time for the next meeting as he is working closely with staff; noting the votes from the Planning Commission resulted in two 7-0 votes and two 5-2 votes on his request for inclusion into the urban growth boundary, and general plan amendment for estate residential; following the urban limit line request of 1-2½ acre feathered zoning. He felt this to be an infill piece of property. Therefore, he would make a presentation at the next meeting.

No further comments were offered.

Mayor Pro Tempore Grzan recalled that when this property first came before the ULL Committee, staff opposed a line that followed Santa Teresa.

Mr. Bischoff said that when you look at where the ULL is proposed around the city, in most cases, it follows closely the urban growth boundary. He noted that the adjacent property was included in the City limits in the 1970s. Staff felt the property was at the fringe of the community and did not see a need for development. Therefore, staff recommended following the urban growth boundary line.

Mayor Kennedy disclosed that he met with Mr. Garcia on this issue. He requested that staff look at establishing some standards for feathering the rural edges of the community and not require full city standards (e.g., bright lights, hard curbs & gutters, etc.). He felt it would be appropriate to develop standards that would be appropriate for rural settings through ordinances or Measure C.

In response to Mayor Pro Tempore Grzan's question, Mr. Bischoff said that there may be development pressures with properties north of Black Rock, should it develop.

Mayor Pro Tempore Grzan stated that he does not support 8-10 foot sound walls along Santa Teresa as it is unsightly and unfriendly. He recommended that walls along major thoroughfares be addressed through landscaping. He said that one of the unique features of Morgan Hill is to be able to look across large expanses of land and see the other side. Should there be future development in this area, he recommended walls be avoided and allow development that is open.

Mayor Kennedy indicated that the City of Gilroy recently took action to limit walls on new development.

Council Member Tate noted that it was the ULL Committee that put this property into the ULL.

Mayor Pro Tempore Grzan said that it was a contentious ULL Committee vote to include this area in the ULL, and that he did not agree with the property's inclusion at the time.

Mayor Kennedy said that there were some issues where the ULL Committee members gave and took. This was one of the issues where there was some give.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Council Member Carr absent, **Continued** this item to April 19, 2006.*

21. AMENDMENT TO DESIRABLE INFILL POLICY

Contract Planner Bischoff presented the staff report, indicating that in 1993, the Council adopted the first desirable infill policy and that it has been in place since then, with modifications. He stated that in general, it has worked well. However, the desirable infill policy is more restrictive than Measure P/C. Staff is suggesting slight modifications to the desirable infill policy to bring it more in line with Measure C and to ensure the City is not precluding itself from taking certain benefits that might otherwise accrue to the City. He addressed the four policy amendments being proposed: 1) allow partial parcels to be included within the urban service area; 2) change in language for partial parcels; 3) eliminates the date limitation, to be replaced by the requirement that the Council makes specific findings that the expansion is not being granted to the same applicant, property or development; 4) eliminate the requirement that property to be brought into the urban service area would have to be adjacent to the urban service area on at least 50% of its perimeter. He stated that this exceeds the standards of Measure P/C and would supercede and preempt the possible expansion of the urban service area that were contemplated and allowed under Measure C. 5) The inclusion of a clarification that the benefit that needs to accrue to the general welfare of the community in order to include property into the urban service area would add open space as an example. The open space would be recorded and dedicated is a public benefit. As the policy is worded at this time, it lists examples that includes infrastructure, and public facilities, but does not mention open space. Staff believes that open space could accrue a lot of benefit to the community and would be consistent with the initiative.

Mayor Kennedy opened the public hearing.

Bill Moreau inquired if the proposed amendment is a back door way to include the Oak Meadow Plaza property into the city limits.

Mr. Bischoff said that although it is true that it is this project that identifies some deficiencies/cleanups that were needed in the policy, he would not characterize it as allowing the project to come in the back door. He said that staff believes, the Council has expressed, and the general plan states, that there is significant public benefit that would accrue in preserving open space. As the policy exists today, it would not allow the preservation of open space. He clarified that the City is not talking about changing an initiative or an ordinance, but has found that the existing policy has some unanticipated items or unrecognized deficiencies that would preclude the City from implementing some valid/legitimate public policies. Therefore, staff is proposing amendments to the desirable infill policy.

Mayor Pro Tempore Grzan noted that when the City established the urban limit line, it followed parcel lines except for this area. He inquired whether the policy would allow the City to split parcels.

Director of Community Development Molloy Previsich said it is important to emphasize that this policy relates to expanding the urban service area as Measure C and prior measures addressed the opportunity. Even if there is more than a 5-year supply of residential land, you can extend the urban service area if it meets the desirable infill criteria. She said that Measure C and ordinances allows the Council to establish the criteria for what is desirable infill. She clarified that this policy is where the Council expands upon and creates the criteria that is supposed to match up with Measure P/C. She said that the policy makes it more stringent; an unintended occurrence. Staff is suggesting that the policy be refined and updated so that it is clear that it is still consistent with Measure C. She said that this policy relates to whether property can meet the desirable infill criteria to expand the urban service area, and not related to the urban limit line. Staff is recommending the policy be amended so that it will be less subject to interpretation by providing clarification, and defining terms better so that it is clear that the City has a policy in place that is consistent with Measure C that implements it.

Council Member Sellers stated that he was comfortable with the recommended changes because it is the right thing to do as it gives the City the opportunity to preserve open space and do those things that everyone in the community would like to see take place. He was comfortable moving forward this evening.

Mayor Kennedy said that the proposed language identified by staff is consistent with Measure C, and was supportive of making these policy changes.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** the Amendments to the Policy by minute action.*

City Council Action

OTHER BUSINESS (continued)

24. FRIENDS OF THE MORGAN HILL LIBRARY “NAMING OPPORTUNITIES” FOR FUNDRAISING CAMPAIGN

City Manager Tewes informed the Council that it has a request from the Friends of the Morgan Hill Library. Under the Council’s donation policy, it would be appropriate for the Council to concur with their recommendation.

Mayor Kennedy opened the floor to public comment.

Carol O’Hare informed the Council that the Friends of the Morgan Hill Library are organizing a fundraising campaign for the new library. As part of the fundraising efforts, they would like to be able to offer major donors the opportunity to place their names on a small plaque in areas of the library. She noted that the Council has various funding levels and the areas of the library that would be associated with the naming rights in front of it.

Council Member Sellers did not know whether the naming rights would be associated with naming the benefactor, or limiting the name to the benefactor. He expressed concern that there may be a restriction of free speech by not allowing an individual to name a room. He recommended that a policy be established relating to language that would be allowed on the plaque by a donor.

Ms. O’Hare said that it was her understanding that the plaque would read “In Honor of...” or “By the family of...” She said that the Friends of the Library could establish a policy such that the wording of the plaque would need to be approved by the librarian or the County librarian.

Council Member Sellers said that the Council could be the body that gives final approval of the wording of the plaque.

Ms. O’Hare stated that she would discuss this concern with library staff to determine the appropriate way to develop a policy. She announced that the library ground breaking ceremony is scheduled for Saturday, May 13, 2006 now that additional funding has been approved.

Mayor Kennedy agreed that there should be a veto power or a second approval required on the language that is to be placed on the donor plaque.

No further comments were offered.

Action: *By consensus, the City Council **Directed** The Friends of the Morgan Hill Library regarding Authorizing Room/Area Naming Rights to Potential Donors for the New Public Library, as Part of their Fundraising Campaign as stated above.*

25. CO-SPONSORSHIP REQUEST – COMMUNITY SOLUTIONS

Mayor Kennedy stated that Ms. Molica was in attendance earlier this evening; indicating that she had to leave.

City Manager Tewes stated that from time to time, community organizations request the Council approve tax payer funds to pay for the rental of various facilities. Community Solutions is one of those requests. He noted that their proposal indicates that the event would be open to the public and should not exceed more than 100 attendees.

Mayor Kennedy stated his support of the co-sponsorship request.

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council, on a 4-0 vote with Council Member Carr absent: 1) **Agreed** to Co-Sponsor Community Solutions' Sexual Assault Prevention Program; and 2) **Appropriated** \$255 from the General Fund Reserve to the Community Promotions Budget (010-1220-42248).*

City Manager Tewes indicated that the City receives requests, from time to time, from community organizations to receive tax payer funds for their event charges. He stated that there are two other types of requests: 1) financial support from community organizations for activities that do not require rental fees such as the request from Live Oak High School for grad night; and 2) community-wide festival events. He informed the Council that the Live Oak High School funding request will return to the Council on April 26. Staff will also return with a recommendation for community-wide festivals seeking City support.

26. PERMANENT SKATE PARK – REVISION TO CAPITAL IMPROVEMENT PLAN

Deputy Director of Public Works Struve presented the staff report, identifying an alternative way that the unfunded permanent state park facility could be realized at the indoor recreation site at a lesser cost than the current estimate of \$1-\$1.2 million. He informed the Council that two private donors have contacted him and offered a generous amount of money to add to this project's budget. Should the Council approve the concept this evening, he would work closely with the Youth Advisory Committee to solicit funding. He proposes to have the park designed with a couple of elements missing, and to offer these elements to private donor(s) for completion. Staff recommends Council approval to revise the capital improvement program to indicate a permanent modular element skate park to be located at the indoor recreation center and appropriate Measure C impact funds for the project. He noted that the Council approved an authorizing resolution for the Proposition 12 funding source in 2001. Further, CEQA has been completed as part of the indoor recreation center process.

Mayor Pro Tempore Grzan expressed concern with the location of the skate park as it is close to Little Llagas Creek. He inquired what amenities would be incorporated to allow the skate park to blend in and not heavily impact the creek, the potential linear park, or the restoration of the creek along the area.

Council Member Sellers said that in the review of the indoor recreation center, it was found that the skate park was to be a significant element. At the time of the approval of the skate park concept at the indoor recreation center, the Council felt the skate park would compliment the trail and would get more

visibility. The thought was that the skate park would enhance an opportunity for a trail as kids and adults would be using the trail. He felt there was significant space to allow for the skate park.

Mr. Struve informed the Council that he has started preliminary design for the skate park to show the State what the City would like to do in order to secure funding. He stated that the trail has been designed, laid out and will change the configuration of the skate park slightly. There will be access to the park from the trail and from the corner of the parking lot into the park. Therefore, staff has accommodated the skate park and the trail. He informed the Council that he will return with a project schedule soon with the idea of trying to open the skate park at the same time the City opens the indoor recreation center.

Mayor Kennedy indicated that there are individuals that use the hills for BMX bicycles. He requested that the City does not lose sight of the need to replicate some sort of facility for BMX users as well.

Action: *On a motion by Council Member Tate and seconded by Mayor Kennedy, the City Council, on a 4-0 vote with Council Member Carr absent, **Appropriated** \$65,000 of Measure C Impact Fees from Unappropriated Funds, to be Combined with State Department of Recreation Grant Funding, to Provide a Permanent Skate Park at the Approved Community Indoor Recreation Site.*

27. COMPREHENSIVE IMMIGRATION REFORM (HR4437)

Mayor Kennedy indicated that he requested the Comprehensive Immigration Reform bill to be placed on the agenda for Council action. He said that HR4437 may no longer be the relevant bill. He noted that staff has provided the Council with a copy of the City of San Jose's resolution on the issue and recommended that this be used as a model for comments to be presented.

City Manager Tewes said that HR4437 is the bill passed by the House of Representatives, and that the Senate is reviewing this bill along with other bills. He did not believe that HR4437 will be the vehicle for ultimate legislation, if ultimate legislation is enacted this session.

Council Member Sellers stated that he was supportive of the student effort and their civic engagement as he tends to support their cause. He noted the Council has a long term policy of not weighing in on federal legislation. He stated that he was comfortable with the support of fairness and justice for immigrants and to make the declaration that the Council is supportive and understands that immigrations play a strong role in the community. Further, the Council is supportive of their role and that it is in opposition to any efforts that degrade any of its citizens. However, he did not believe this is a direction the Council should head as the Council finds it inappropriate for others to weigh in on activities that are within the City's purview, unless there is a direct impact. While this is a national issue, he recommended the City make a declaration of support on the issue, but not weigh in on the legislation as has been the Council's policy.

Council Member Tate felt the issue belongs in another jurisdiction; although sympathetic. He did not know if he could represent the citizens of Morgan Hill on a federal issue, and was not comfortable taking a stand on the issue.

Mayor Kennedy felt that this is an issue that affects many hardworking individuals in this community as well as friends and families of many individuals in the community. He felt the City needs to take a stand as it is an important issue that requires expressing the City's view. Those who are advocating for punitive action will win because cities have not spoken out. He recommended the City take a position along the lines of what Council Member Sellers' suggested; a position that is not specific to a particular piece of legislation; although this is a position he would prefer to take if he had Council support to do so.

Mayor Pro Tempore Grzan stated that he was not sure if he was willing to weigh in against this bill. However, he felt it appropriate for the Council to make a statement in support of the migrant residents in the community. Further, to ask for fair and humane treatment of immigrants and aliens who reside in the community. He felt the City could write supportive language that does not address the specific bill in the hopes of stating something positive, condemning punitive and other measures against any population.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Grzan, the City Council, on a 3-1 vote with Council Member Tate voting no and Council Member Carr absent, **Authorized** the Mayor to Send a Letter outlining the sentiments expressed by the Council above regarding HR4437.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:45 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY